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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/030,818	06/07/2002	Hans Bruder	396/50809	2416

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EXAMINER
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MACARTHUR, VICTOR L

ART UNIT	PAPER NUMBER
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3679  
DATE MAILED: 12/02/2002 | /

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application N .	Applicant(s)
	10/030,818	BRUDER, HANS
	Examiner Victor MacArthur	Art Unit 3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 22 August 2002.

2a) This action is FINAL.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-18 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-18 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 07 June 2002 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 10.

4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Reasons for Supplemental Action***

This action is submitted due to receipt of applicant's information disclosure statement (IDS) filed 8/22/02. Since the IDS was not matched with the file until after the mailing of the previous Office action, the IDS was not reviewed at the time of that mailing. The examiner has since considered the IDS. A marked-up copy of applicant's PTO-1449 is attached to this action. The paragraphs below are a restatement of the previous Office action.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "turnbuckle" and the "guides pointing toward the interior", of claim 1, must be shown or the feature(s) canceled from the claim(s). Also, figure 6 does not show anything "laterally spread open" as described in the specification. Also, figure 9 does not show an "unattractive wedge-shaped space" or the "end disk 24" while the specification seems to indicate that one or the other should be present. Also, figures 10-12 do not show how "the end disk 24 has two openings 27 through which the screws can pass through and can be screwed into the openings 7" since openings 27 and 7 are shown to be perpendicular to one another. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). No new matter should be entered.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they fail to show reference #9 in figs. 5 and 6 as described in the specification. A proposed drawing

correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

*Specification*

The substitute specification filed in paper #7 has been entered and is objected to as detailed below.

The incorporation of essential material in the description of figure 9 (i.e. description of a turnbuckle) in the specification by reference to a foreign application or patent, or to a publication is improper. Applicant is required to amend the disclosure to include the material incorporated by reference. The amendment must be accompanied by an affidavit or declaration executed by the applicant, or a practitioner representing the applicant, stating that the amendatory material consists of the same material incorporated by reference in the referencing application. See *In re Hawkins*, 486 F.2d 569, 179 USPQ 157 (CCPA 1973); *In re Hawkins*, 486 F.2d 579, 179 USPQ 163 (CCPA 1973); and *In re Hawkins*, 486 F.2d 577, 179 USPQ 167 (CCPA 1973).

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). The limitation “guides pointing toward the interior” in claim 1 is not supported by the specification.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, in line 3 of the claim, the phrase "longitudinally extending grooves on outside" is indefinite. It is unclear what element, if any, the grooves are on the outside of. The phrases "the construction system", "its open ends" and "the open face", in lines 4-5 and 11 of the claim, lack sufficient antecedent basis, as the elements were not previously recited in the claim. In line 10 of the claim, the phrase "disc-type" renders the claim(s) indefinite because the addition of the word "type" to an otherwise definite expression extends the scope of the expression so as to render it indefinite. It is unclear what the word "type" is intended to convey. Claims 2-9 depend from rejected claim 1 thereby rendering these dependant claims indefinite.

As to claim 10, in line 1 of the claim it is unclear if the phrase "comprising" is meant to modify the "structure" or the "supporting profile". In line 3 of the claim, the phrase "the carrying profile" lacks sufficient antecedent basis, as the elements were not previously recited in

the claim. In line 7 of the claim, the phrase "disc-type" renders the claim(s) indefinite. Claims 11-18 depend from rejected claim 10 thereby rendering these dependant claims indefinite.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7 and 10-16 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN 4410157 to Monti.

Regarding claim 1, Monti discloses (fig.3) a supporting profile for a system for erecting structures comprising: longitudinally extending grooves (20) on the outside of the supporting profile (14A), which grooves are used for the connection of additional structural parts (40) of a construction system, a slid-in adapter piece (48) at at least one of its open ends of the profile, the adapter piece having a receiving chamber (66), wherein the adapter piece is inserted in guides (24) pointing toward the interior of the supporting profile and is axially held by means of securing devices (54) which are inserted in bores (56) penetrating the guides, wherein a disk end piece (52), which is adapted (via 48) to the cross-section of the supporting profile, is provided for being placed on at least an open face of the supporting profile and is connected with the adapter piece. Monti does not expressly state that the receiving chamber is for a turnbuckle. However, it is well established that a recitation with respect to the manner in which an apparatus is intended to be employed, *i.e.*, a functional limitation, does not impose any structural limitation upon the

claimed apparatus which differentiates it from a prior art reference disclosing the structural limitations of the claim. In re Pearson, 494 F.2d 1399, 181 USPQ 641 (CCPA 1974); In re Casey, 370 F.2d 576, 152 USPQ 235 (CCPA 1967); In re Otto, 312 F.2d 937, 136 USPQ 458 (CCPA 1963). Furthermore, it appears that the receiving chamber of Monti is fully capable of being for a turnbuckle.

As to claim 2, Monti discloses the supporting profile according to claim 1 wherein the end piece (52) is constructed as a formed body with a concave recess (64) which is adapted (via 82) to the external curvature of a round profile.

As to claim 3, Monti discloses the supporting profile according to claim 2, wherein the formed body is provided with a passage opening (66).

As to claim 4, Monti discloses (fig.11) the supporting profile according to claim 1 wherein the end piece (46) is provided with a joint part (32) for the connection (via 12) with additional profiles (16).

As to claim 5, Monti discloses the supporting profile according to claim 4, wherein the joint part includes a first disk (fig.2, first 32) which extends perpendicular to the end piece and has a center bore (fig.2, receiving 34) and includes an additional second disk (fig.2, second 32) which is connected (via 30, 12) with the first disk (first 32) by means of a bolt (34) acting as an axis of rotation and which is equipped with fastening devices (12) for another profile.

As to claim 6, Monti discloses (fig.2) the supporting profile according to claim 5, wherein the second disk is connected (via ref.12) with another end piece.

As to claim 7, Monti discloses (fig.2) the supporting profile according to claim 5, wherein the second disk is provided with a clamping part (28, 36) for the insertion into one of the longitudinally extending grooves of another supporting profile.

As to claim 10, Monti discloses (fig.3) a supporting profile for erecting a structure, the profile comprising: an elongated hollow body (14A) having first and second ends and a longitudinal groove (20) on the outside of the body of the profile; an adapter piece (48) inserted into and secured to the first end of the elongated body, the adapter piece having a receiving chamber (66); and a disk end piece (52) disposed at the first end and connected to the adapter piece.

As to claim 11, Monti discloses the supporting profile according to claim 10, wherein the end piece has a concave recess (64) adapted (via82) to an external curvature of a round profile.

As to claim 12, Monti discloses the supporting profile according the claim 11, wherein the end piece has an opening (66).

As to claim 13, Monti discloses the supporting profile according to claim 10, wherein the end piece has a joint (32) for connection (via 12) to another profile (16).

As to claim 14, Monti discloses (fig. 3) the supporting profile according to claim 13, wherein the joint includes a first disk (first 32) which extends perpendicular to the end piece and has a center bore (fig.2, receiving 34), and a second disk (second 32) having a center bore (receiving second 34) and being connected (via 30, 12) with the first disk by means of a bolt (one of first or second 34) extending through the center bores and acting as an axis of rotation, the second disk having a fastening device (28) for connection to another profile.

As to claim 15, Monti discloses (fig. 2) the supporting profile according to claim 14, wherein the second disk is connected to another end piece.

As to claim 16, Monti discloses the supporting profile according to claim 14, wherein the second disk has a clamping part (28) that is configured (via 36) for insertion into longitudinal grooves of another supporting profile.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8, 9, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 4410157 to Monti in view of USPN 2538483 to Summers.

As to claim 8, 9, 17 and 18, Monti discloses the supporting profile according to claims 5 or 14, Monti does not disclose that the ends of the bolt receive hemispheres. Summers teaches (col.1, ll.40-50 and figs.1-4) a hemisphere (10) provided for the lateral covering of a disc (fig.2, at base of 15) wherein the hemisphere has a center bore (14) with a thread and, by means of this thread, is screwed onto a thread at the end of the bolt. Summers teaches (col.1, ll.1-5) that hemispheres are beneficial for the purpose of covering unsightly exposed ends of hardware. Therefore it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the bolt of Monti to receive hemispheres, as taught by Summers, for the purpose of covering unsightly exposed ends of hardware. The word "hemisphere" is

taken by the examiner to mean "half of a **roughly** spherical body" in accordance with Merriam-Webster's Collegiate Dictionary Tenth Edition.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor MacArthur whose telephone number is (703) 305-5701. The examiner can normally be reached on 8:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne Browne can be reached on (703) 308-1159. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

*VLM*

VLM  
November 29, 2002

*Lynne H. Browne*

**Lynne H. Browne**  
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